

Corporations Act 2001 (Cth) (Act)

Basketball Association of Newcastle Limited

ABN 81 003 432 871

Constitution

Adopted: 5 Dec 2024

Acknowledgement of Country

The Basketball Association of Newcastle Limited acknowledges Aboriginal people as the traditional custodians of the lands within our footprint areas: the Awabakal and Worimi nations. Sovereignty was never ceded. It always was and always will be Aboriginal land.

We also pay respect to the Elders, past present and future. We extend this acknowledgement and pay our respects to all Aboriginal and Torres Strait Islander peoples who may utilise our facilities from time-to-time.

Acknowledgement of our founding Members

The Basketball Association of Newcastle Limited recognises that Basketball has been played in various forms and at various locations in Newcastle since 1924.

We acknowledge the foresight of our founding Members, who established this Basketball organisation, with the first Articles of Association being created in 1946.

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CORPORATIONS ACT 2001 (CTH)

CONSTITUTION

BASKETBALL ASSOCIATION OF NEWCASTLE LIMITED

1. NAME OF ASSOCIATION

The name of the Association is Basketball Association of Newcastle Limited (**Association**).

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution unless the contrary intention appears:

Act means the *Corporations Act 2001* (Cth).

Basketball means Basketball as recognised by FIBA from time-to-time and other Basketball-related activities.

Board means the body managing the Association and consisting of the Directors.

Constitution means this Constitution of the Association.

Company Secretary means a person appointed as a Company Secretary of the Association by the Board under **clause 31**.

Director means a member of the Board and includes any person acting in that capacity from time-to-time appointed in accordance with this Constitution.

Disciplinary Tribunal means a committee for the purposes of **clause 10** as established by the Board to hear disciplinary matters.

General Manager or means a person appointed as General Manager, chief executive officer or similar position of the Association by the Board under **clause 30**. If a General Manager or chief executive officer has not been appointed by the Board, all references to "General Manager" in this Constitution will be taken to refer to the Board, excluding those in **clause 30**.

General Meeting means the annual or any special General Meeting of the Association.

Incapacitated means unable to fulfil duties as required by this Constitution or the Act, including being able to:

- a) understand the information relevant to the decisions that will have to be made in the role of Director;
- b) retain that information to the extent necessary to make those decisions;
- c) use or weigh that information as part of the decision-making process; or
- d) communicate the decisions in some way.

Individual Member means a registered, financial Member of the Association who is at least 18 years of age.

Intellectual Property means all rights subsisting in copyright, business names, names, trademarks (or signs), logos, designs, equipment including computer software, images

(including photographs, videos, or films) or service marks relating to the Association or any activity of or conducted, promoted, or administered by the Association.

Junior Member means a registered Member of the Association who is younger than 18 years of age.

Life Member means an individual appointed as a Life Member of the Association under **clause 5.2**.

Life Playing Member means an individual appointed as a Life Playing Member of the Association under **clause 5.3**.

Local Area means the geographical area for which the Association is responsible as recognised by Basketball NSW of which the Association is a Member which at the time of adoption of this Constitution is the Lake Macquarie, Newcastle, and Port Stephens regions.

Member means a Member of the Association for the time being under **clause 5**.

Membership Period means the start and end date issued to a Member (365-day period), generated after payment of fees has been received.

Nominations Committee means the committee established by the Board under **clause 14.4**.

National Sporting Organisation means the national sporting organisation for Basketball being at the date of adoption of this Constitution, Basketball Australia.

Objects means the Objects of the Association in **clause 3**.

Register means a Register of Members kept and maintained in accordance with **clause 7**.

Regulations means any rules, by-laws or Regulations made by the Board under **clause 39**.

Special Resolution means a "Special Resolution" as defined in the Act.

State Sporting Organisation means the NSW state sport organisation for Basketball being at the date of adoption of this Constitution, New South Wales Basketball Association Limited (**Basketball NSW**).

Virtual Meeting means a meeting held by telephone, video, or any other technology (or any combination of these technologies), that:

- a) permits each Director at a meeting of the Board to be heard and reasonably participate and vote on matters put to them; or
- b) each Voting Member at a General Meeting a reasonable opportunity to participate and exercise their rights of question or voting.

Voting Member means those Members of the Association entitled to vote in General Meeting as set out under **clause 27.1**.

2.2 Interpretation

In this Constitution:

- a) a reference to a function includes a reference to a power, authority, and duty;
- b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- c) words importing the singular include the plural and vice versa;
- d) words importing any gender include the other genders;
- e) references to persons include corporations and bodies politic;
- f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- g) a reference to a statute, ordinance, code, or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and
- h) a reference to "writing" shall unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form, including messages sent by electronic transmission.

2.3 Severance

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable, the phrase or provision is to be read down if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Constitution.

2.4 The Act

Except where the contrary intention appears, in this Constitution, an expression that deals with a matter under the Act has the same meaning as that provision of the Act. The provisions of the Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Association.

3. OBJECTS OF THE ASSOCIATION

The Association is established solely for the Objects. The Objects of the Association are to:

- a) Conduct, encourage, promote, advance, control and administer Basketball throughout the Local Area;
- b) Act, at all times, on behalf of and in the interest of the Members and Basketball in the Local Area;
- c) To promote and provide opportunities in the Local Area to participate at all levels of Basketball, including through association level competitions in the Local Area;
- d) Advance the operations and activities of the Association throughout the Local Area;

- e) Maintain and enhance standards, quality, and reputation of Basketball in the Local Area for the collective and mutual benefit and interests of Members and Basketball;
- f) Promote Basketball in the Local Area for commercial, government and public recognition and benefits;
- g) Represent the interests of the Association, the Members and of Basketball in the Local Area in any appropriate forum;
- h) Select, prepare, and enter Association teams in Basketball competitions;
- i) Create, support, and promote Basketball events, games, tournaments, and championships in the Local Area;
- j) Encourage and promote widespread participation in Basketball in the Local Area as an all-abilities and inclusive sport to enhance opportunities for every participant to reach levels appropriate to their ability and aspiration;
- k) Promote the health and safety of the Members;
- l) Have regard to the public interest in its operations;
- m) To encourage the provision, secure access or develop appropriate facilities for participation in Basketball within the Local Area; and
- n) Undertake and or do all such things or activities which are necessary, incidental, or conducive to the advancement of these Objects.

4. POWERS OF THE ASSOCIATION

Solely for furthering the Objects, the Association has, in addition to any other powers it has under the Act, the legal capacity and powers of a company limited by guarantee as set out under the Act.

5. MEMBERS

5.1 Members

The Members of the Association shall consist of:

- a) Life Members and Life Playing Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, to debate and to vote at General Meetings;
- b) Individual Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, to debate and to vote at General Meetings; and
- c) Junior Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present, to debate but not vote. One (1) parent or guardian of each Junior Member nominated at the time of registering as a Member, shall subject to this Constitution, have the right to receive notice of General Meetings and to be present, to debate and to vote at General Meetings for and on behalf of the Junior Member they represent. The maximum number of votes that can be exercised in this regard by each adult is two (2) votes, ie, their own Individual Member vote and one (1) nominated Junior Member vote.

5.2 Life Members

Life Members may be elected at annual General Meetings of the Association on the following basis:

- a) Life membership shall be restricted to those who have contributed to the control, promotion, integration, or fostering of Basketball by their participation in the activities of the Association for a total of at least ten (10) years. The years of service do not need to be consecutive;
- b) names of nominees for Life membership shall be submitted in writing to the Company Secretary. Such nomination or nominations shall firstly be approved and recommended by a majority of those attending and eligible to vote at the next meeting of the Board. Upon such approval the name or names shall be submitted to the next annual General Meeting;
- c) the nomination must be approved by a majority of at least 75% of those Voting Members present and entitled to vote at the annual General Meeting;
- d) a history of the service of each nominee for election as a Life Member shall accompany the application both to the Board and to the annual General Meeting at which the nomination is considered; and
- e) A Life Member shall not be required to pay annual membership fees to the Association.

5.3 Life Playing Members

- a) Life Playing membership shall be defined as those persons who have represented the Association as a player for a total of twelve (12) years and may include representation with teams located in the Local Area entered in national or interstate competitions. A maximum of four (4) years as a junior (under 20 or lower) may be included in the twelve (12) years. The years of representation do not need to be consecutive.
- b) Names of nominees for Life Playing membership shall be submitted in writing to the Company Secretary of the Association. Such nomination or nominations shall firstly be approved and recommended by a majority of those attending and eligible to vote at the next meeting of the Board. Upon such approval the name or names shall be submitted to the next annual General Meeting.
- c) The nomination must be approved by a majority of at least 75% of those Voting Members present and entitled to vote at the annual General Meeting.
- d) A history of representative playing of each nominee for election as a Life Playing Member shall accompany the application both to the Board and to the annual General Meeting at which the nomination is considered.
- e) A Life Playing Member shall not be required to pay annual membership fees to the Association.

6. MEMBERSHIP APPLICATION

6.1 Application for membership

An application for membership must be:

- a) in writing, which includes electronically, on the form prescribed by Basketball NSW or on a form approved by Basketball NSW after discussion with the Association from time-to-time by the Board, and lodged with the Association; and

- b) accompanied by the appropriate fee(s).

By applying, an applicant acknowledges and agrees that they voluntarily agree to be bound by the rules, Regulations, and policies of the Association (as well as those of Basketball NSW and Basketball Australia where relevant) including but not only this Constitution.

6.2 Discretion to accept or reject application

- a) Subject to **clause 6.2(d)**, the Board must accept an application for membership where the applicant has complied with the requirements in **clause 6.1**.
- b) Where the Board accepts an application, the applicant shall become a Member. Membership shall be deemed to commence upon acceptance of the application by the Board. The Register shall be amended accordingly as soon as practicable.
- c) Where the Board rejects an application because the applicant has failed to comply with the requirements in **clause 6.1**, it shall provide the applicant with reasons for such rejection, refund any fees forwarded with the application and the application shall be deemed rejected by the Association. An applicant who subsequently reapplies in accordance with the requirements of **clause 6.1** must then be dealt with in accordance with **clause 6.2(a)**.
- d) Within twenty-eight (28) days of registration of any Member, the Board shall be able to remove that Member from the membership for cause, which shall be notified to the Member in writing. The relevant Member shall be entitled to enliven the Grievance Procedure in **clause 32** if the Member wishes to challenge the determination of the Board;
- e) Other than in relation to a matter under **clause 6.2(d)**, there is no right of appeal where the Board rejects an application for membership, whether a new application or a renewal application.

6.3 Renewal

- a) Members (other than Life Members and Life Playing Members) must re-apply for membership annually in accordance with the timeframes and procedures set down by the Association from time-to-time. Members acknowledge and agree that subject to **clause 6.2(a)**, membership renewal is not automatic. **Clause 6.2** applies to re-applications for membership.
- b) Upon re-application a Member must provide details of any change in their personal details, and any other information reasonably required by the Association.

6.4 Deemed membership

- a) All persons who are, prior to the approval of this Constitution under the Act, Members of the Association shall be deemed Members from the time of approval of this Constitution under the Act.
- b) Any persons, prior to approval of this Constitution under the Act, who are not deemed Members under **clause 6.4(a)** shall be entitled to carry on such functions analogous to their previous functions as are provided for under this Constitution.

7. REGISTER OF MEMBERS

7.1 Association to keep Register

The Association must keep and maintain a Register of Members, which is accessible by and uses the same platform as both Basketball NSW and Basketball Australia, within which shall be kept:

- a) the full name and address of the Member;
- b) the category of membership of the Member;
- c) the date on which the Member became a Member;
- d) any other information determined by the Board, Basketball NSW, or Basketball Australia, or required by the Act; and
- e) where applicable, the date of cessation of membership of any Member.

Members shall provide notice of any change and required details to the Association within one (1) month of such change.

The Association shall adopt a privacy policy and procedures consistent with best practice and requirements as set out in legislation, and will, where relevant give consideration to the Basketball NSW and Basketball Australia policies and procedures, for handling and securing personal information of Members.

7.2 Inspection of Register

Having regard to privacy and confidentiality considerations, inspection of the Register will only be available as required by the Act and under **clause 33.2**. If permitted, only an extract of the Register, excluding the address or other direct contact details of any Member, shall be made available for inspection (but not copying) by Members.

7.3 Use of Register

Subject to the Act, confidentiality considerations and privacy laws, the Register may be used by the Association solely to further the Objects, as the Board considers appropriate.

8. EFFECT OF MEMBERSHIP

Members acknowledge and agree that:

- a) this Constitution forms a contract between each of them and the Association and that they are bound by this Constitution and the Regulations;
- b) they shall comply with and observe this Constitution and the Regulations and any determination, resolution or policy which may be made or passed by the Board or other entity with delegated authority;
- c) by submitting to this Constitution and the Regulations, they are subject to the jurisdiction of the Association, Basketball NSW, and Basketball Australia;
- d) the Constitution and the Regulations are necessary and reasonable for promoting the Objects and particularly the advancement and protection of Basketball;

- e) neither membership of the Association nor this Constitution gives rise to:
 - (i) any proprietary right of Members in, to or over the Association or its property or assets;
 - (ii) any automatic right of a Member to renewal of their membership of the Association;
 - (iii) subject to the Act and the Association acting in good faith, the right of Members to natural justice, unless expressly provided for in this Constitution;
- f) they are entitled to all benefits, advantages, privileges, and services of Association membership; and
- g) a right, privilege, or obligation of a person by reason of their membership of the Association:
 - (i) is not capable of being transferred or transmitted to another person; and
 - (ii) terminates upon the cessation of membership whether by death, resignation or otherwise.

9. DISCONTINUANCE OF MEMBERSHIP

9.1 Notice of resignation

- a) A Member who has paid all arrears of fees payable to the Association may resign or withdraw from membership of the Association by giving notice in writing to the Association of such withdrawal or resignation.
- b) When the Association receives a notice given under **clause 9.1(a)**, it must make an entry in the Register that records the date on which the Member ceased to be a Member.

9.2 Discontinuance for breach

Notwithstanding anything in the Act or this Constitution:

- a) membership of the Association may be discontinued by the Board upon breach of any clause of this Constitution or the Regulations, including, but not limited to, the failure to pay any monies owed to the Association, failure to comply with the Regulations or any resolutions or determinations made or passed by the Board or any duly authorised committee;
- b) membership shall not be discontinued by the Board under **clause 9.2(a)** without the Board first giving the accused Member the opportunity to explain the breach and/or remedy the breach; and
- c) where a Member fails, in the Board's view to adequately explain the breach, that Member's membership shall be discontinued under **clause 9.2(a)** by the Board giving written notice of the discontinuance to the Member. The Register shall be amended to reflect any discontinuance of membership under this **clause 9.2** as soon as practicable.

9.3 Member to re-apply

A Member whose membership has ceased or been discontinued under **clauses 9.1 or 9.2**:

- a) must seek renewal and re-apply for membership in accordance with this Constitution; and
- b) may be re-admitted at the discretion of the Board. There is no right of appeal where the Board refuses to re-admit a former Member under this clause.

9.4 Forfeiture of rights

A Member who ceases to be a Member, for whatever reason, shall forfeit all rights in and claims upon the Association and its property and shall not use any property of the Association including Intellectual Property. Any Association documents, records or other property in the possession, custody or control of that Member shall be returned to the Association immediately.

9.5 Membership may be reinstated

Membership which has been discontinued under this **clause 9** may be reinstated at the discretion of the Board, with such conditions as it deems appropriate.

9.6 Refund of membership fees

- a) Membership fees or subscriptions paid by the discontinued Member may be refunded in accordance with this **clause 9.6**.
- b) The Association component of any fee or subscription paid by a discontinued Member may be refunded at the discretion of the Association, and may be on a pro-rata basis.
- c) The Basketball NSW component of any fee or subscription paid by a discontinued Member will not be refunded if the discontinued Member has participated in a Basketball activity (game or training) prior to discontinuance.

10. DISCIPLINE

10.1 Disciplinary proceedings

The Board may commence or cause to be commenced disciplinary proceedings against a Member who has allegedly:

- a) breached, failed, refused, or neglected to comply with a provision of this Constitution, the Regulations or any resolution or determination of the Board or any duly authorised committee;
- b) acted in a manner unbecoming of a Member, or prejudicial to the purposes and interests of the Association and/or Basketball; or
- c) brought themselves, the Association, any other Member or Basketball into disrepute.

11. SUBSCRIPTIONS AND FEES

- a) The annual membership subscription and any other fees or levies payable by Members or categories of Members to the Association, the benefits which apply, the time for, and manner of payment, shall be determined by the Board from time-to-time.
- b) The Board is empowered to prevent any Member whose annual subscription or any other fees are in arrears from exercising the whole or any of the rights or privileges of

membership of the Association, including but not limited to the right to vote at General Meetings. There is no right to natural justice or any right of appeal where the Board exercises its power under this **clause b)**.

12. EXISTING DIRECTORS

The Directors of the Association in office immediately prior to approval of this Constitution under the Act shall continue in those positions other than the Director (if any) appointed under **clauses 7.2(a) and 7.3** of the existing Constitution, who ceases to hold office upon approval of this Constitution.

The Directors of the Association will then retire and re-election of Directors will occur as follows:

- a) At the first annual General Meeting following approval of this Constitution, three (3) existing Directors whose term expires at the 2025 annual General Meeting shall retire, and may be replaced with two (2) elected Directors elected under **clause 15**;
- b) at the second annual General Meeting following approval of this Constitution, two (2) of the existing Directors whose term expires at the 2026 annual General Meeting:
 - (i) only two (2) shall retire, and be replaced with two (2) elected Directors elected under **clause 15**; and
 - (ii) the remaining two (2) existing Directors will continue for an additional term of one (1) year.

To determine which two (2) existing Directors will retire in 2026, the following process will be applied:

- c) where a Ballot was held at the 2024 annual General Meeting, the existing Directors with the lowest votes at the ballot will retire first;
- d) where a Ballot was not held at the 2024 annual General Meeting, the existing Directors will agree amongst themselves, acting in good faith, which Directors will retire first, and will communicate this to the Members;
- e) where neither a Ballot was held or an agreement cannot be reached, all existing Directors whose term expires in 2026 will retire and be replaced with:
 - (i) with two (2) elected Directors elected under **clause 15** except that these two (2) Directors will be appointed for a term of one (1) year; and
 - (ii) with a further two (2) elected Directors elected under **clause 15**.

13. POWERS OF THE BOARD

Subject to the Act and this Constitution, the business of the Association shall be managed, and the powers of the Association shall be exercised by the Board. In particular, the Board shall act in accordance with the Objects and shall operate for the benefit of the Members and Basketball and community throughout the Local Area.

14. COMPOSITION OF THE BOARD

14.1 Composition of the Board

The Board shall comprise:

- a) six (6) elected Directors who must all be Members and who shall be elected under **clause 15**; and
- b) up to three (3) appointed Directors who need not be Members and who may be appointed by the Directors under **clause 16**.

14.2 Election and appointment of Directors

- a) The elected Directors shall be elected under **clause 15**.
- b) The appointed Directors may be appointed under **clause 16**.

14.3 Portfolios

The Board may allocate portfolios and/or titles to Directors. Subject to this Constitution and any properly passed resolution of the Board, the allocation of portfolios or titles does not affect the powers and duties of Directors.

14.4 Nominations Committee

- a) A Nominations Committee shall be formed comprising of the persons described in Clause **d)**, the role of which shall include the task of identifying candidates to fill Director vacancies (including casual vacancies) and assessing all nominees for Director vacancies.
- b) The complete and specific duties, functions and operating rules of the Nominations Committee are to be defined in the written Nominations Committee Charter, which shall be adopted by the Board from time-to-time.
- c) The Nominations Committee must utilise a skills and/or attributes matrix as part of its assessment of nominees for Director vacancies.
- d) The Nominations Committee shall comprise of the following persons:
 - (i) An independent Chair nominated by the Board;
 - (ii) A Board member chosen by the Board, other than a person who is retiring from the Board or a nominee for election to the Board; and
 - (iii) A representative of the Members resolved at each General Meeting of the Company.

15. ELECTED DIRECTORS

15.1 Nomination for Board

- a) Nominations for elected Director positions shall be called for thirty-five (35) days prior to the annual General Meeting. When calling for nominations, details of the necessary qualifications and job descriptions for the positions shall also be provided. Qualifications and job descriptions may be determined by the Board from time-to-time.

- b) Nominees for elected Director positions must declare any potential conflicts of interest.

15.2 Form of nomination

Nominations must be:

- a) in writing on the prescribed form; and
- b) signed by two (2) Individual Members whose Membership Period end date is greater than the date of the annual General Meeting; and
- c) certified by the nominee (who must be an Individual Member and their Membership Period end date is greater than the date of the annual General Meeting) expressing their willingness to accept the position for which they are nominated; and
- d) delivered to the Association not less than twenty-five (25) days before the date fixed for the annual General Meeting.

15.3 Elections

- a) If the number of nominations received is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated may be declared elected only if approved by a majority of Voting Members.
- b) If there are insufficient nominations received to fill all vacancies on the Board, or if a person is not approved by the majority of Members under **clause 15.3(a)**, the positions will be deemed casual vacancies under **clause 17.1**.
- c) If the number of nominations exceeds the number of vacancies to be filled, a ballot (including an electronic ballot) will be conducted for each vacancy on the Board in accordance with **clause d)**.
- d) Voting shall be conducted in such a manner and by such a method as determined by the Board from time-to-time.

15.4 Term of appointment for elected Directors

- a) Directors elected under **clause 15** shall be elected for a term of three (3) years. Subject to provisions in this Constitution relating to early retirement or removal of Directors, elected Directors shall remain in office from the conclusion of the annual General Meeting at which the election occurred until the conclusion of the third annual General Meeting following.
- b) In each three (3)-year period, two (2) elected Directors shall retire until, after three (3) years, the six (6) original elected Directors have retired, after which those elected Directors (or their replacements) who first retired, shall retire and so on.
- c) The sequence of retirements under **clause 15.4(b)** to ensure rotational terms shall be in accordance with **clause 12**.
- d) Following the adoption of this Constitution, no person who has served as a Director for a period of two (2) consecutive full terms shall be eligible for election or appointment as a Director until the period of two (2) years following the date of conclusion of their last term as a Director has expired, unless approved by Special Resolution at a General Meeting of Members. Service to fill a casual vacancy immediately prior to a person's first term is excluded from the operation of this clause.

16. APPOINTED DIRECTORS

16.1 Appointment of Directors

The elected Directors may appoint up to three (3) appointed Directors.

16.2 Qualifications for appointed Directors

The appointed Directors may have specific skills in commerce, finance, marketing, law, or business generally or such other skills which complement the Board composition. They do not need to be Members.

16.3 Term of appointment

- a) Appointed Directors may be appointed by the elected Directors under this Constitution for a term of two (2) years, which shall commence from the first Board meeting after the annual General Meeting until after the conclusion of the second annual General Meeting that follows.
- b) Appointed Directors should be appointed to ensure rotational terms that coincide with the elected Directors' rotational terms.
- c) Any adjustment to the term of appointed Directors appointed under this Constitution necessary to ensure rotational terms under this Constitution shall be determined by the Board.

17. VACANCIES ON THE BOARD

17.1 Casual vacancies

Any casual vacancy occurring in the position of Director may be filled by the remaining Directors from among appropriately qualified persons. Any casual vacancy may only be filled for the remainder of the Director's term under this Constitution. A Director appointed in casual vacancy need not be a Member.

17.2 Grounds for termination of Director

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:

- a) dies;
- b) becomes bankrupt or makes any arrangement or composition with their creditors generally;
- c) becomes Incapacitated, of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- d) resigns their office in writing to the Association;
- e) is absent without the consent of the Board from meetings of the Board held during a period of six (6) months;
- f) holds any office of employment with the Association;
- g) is directly or indirectly interested in any contract or proposed contract with the Association and fails to declare the nature of that interest;
- h) is removed by the Voting Members in accordance with the Act; or

- i) would otherwise be prohibited from being a director of a corporation under the Act.

17.3 Board may act

If a casual vacancy or vacancies arises in the office of a Director or Directors, the remaining Directors may act. If the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board however, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum.

18. MEETINGS OF THE BOARD

18.1 Board to meet

The Board shall meet as often as is deemed necessary in every calendar year for the dispatch of business (and shall be at least as often as is required under the Act). Subject to this Constitution, it may adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time convene a meeting of the Board within a reasonable time, and giving at least five (5) business days' notice.

18.2 Decisions of Board

- a) Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination of a majority of Directors shall for all purposes be deemed a determination of the Board. All Directors shall have one (1) vote on any question. Subject to (b) below, where voting is equal the motion is lost and the chair does not have a casting vote.
- b) If, at two (2) consecutive Board meetings, there is a substantively identical matter for which there is an equality of votes for and against, at the second Board meeting the chair will, notwithstanding (a) above, have a casting vote solely for the vote on that matter.

18.3 Resolutions not in meeting

- a) A resolution in writing that has been signed or assented to by any form of visible or other electronic communication by a simple majority of the Directors shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one (1) or more of the Directors.
- b) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Board may be held where one (1) or more of the Directors is not physically present at the meeting, provided that:
 - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously, and instantaneously whether by means of telephone or other form of communication;
 - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time-to-time by the Board or this Constitution. The notice will specify that Directors are not required to be present in person;
 - (iii) if a failure in communications prevents **clause 18.3(b)(i)** from being satisfied by the number of Directors which constitutes a quorum, and none of such Directors are present at the place where the meeting is deemed by virtue of the further provisions of this clause to be held, then the meeting shall be suspended until **clause 18.3(b)(i)** is satisfied again. If such condition is not satisfied within fifteen (15) minutes from the interruption, the meeting shall be deemed to have been terminated or adjourned; and

- (iv) any meeting held where one (1) or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of the meeting, provided a Director is there present. If no Director is there present, the meeting shall be deemed to be held at the place where the chair of the meeting is located.

18.4 Quorum

At meetings of the Board the number of Directors whose presence is required to constitute a quorum is five (5). A quorum must remain present throughout the meeting.

18.5 Notice of Board meetings

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their apology or presence) not less than fourteen (14) days written notice of the meeting of the Board shall be given to each Director. The agenda shall be forwarded to each Director not less than four (4) days prior to such meeting.

18.6 Chair

Following the annual General Meeting, the Board shall appoint a chair from among its number for a term of twelve (12) months. The chair shall be the nominal head of the Association and will act as chair of any Board meeting or General Meeting at which they are present and willing to act. If there is no chair or the chair is not present or is unwilling or unable to preside at a Board meeting the remaining Directors shall appoint another Director to preside as chair for that meeting only.

18.7 Conflict of interest

A Director shall declare their interest in any contractual, selection, disciplinary, or financial matter in which a conflict of interest arises or may arise. They shall, unless otherwise determined by the Board, absent them self from discussions of such matters and shall not be entitled to vote in respect of such matters. If the Director casts a vote, the vote shall not be counted. If there is any uncertainty as to whether it is necessary for a Director to absent them self from discussions and refrain from voting, the issue should be immediately determined by the Board. If this is not possible, the matter shall be adjourned or deferred.

18.8 Disclosure of interests

- a) The nature of the interest of a Director must be declared at the meeting of the Board at which the relevant matter is first taken into consideration, if the interest then exists. In any other case, the interest should be disclosed to the Board at the next meeting of the Board. If a Director becomes interested in a matter after it is made or entered into, the declaration of the interest must be made at the first meeting of the Board held after the Director interest has arisen.
- b) All disclosed interests must also be disclosed to each annual General Meeting.

18.9 General disclosure

A general notice stating that a Director is a member of any specified firm or Association and that they are 'interested' in all transactions with that firm or Association is sufficient declaration under **clause 17.8**. After such general notice, it is not necessary for the Director to give a special notice regarding any particular transaction with that firm or Association.

18.10 Recording disclosures

Any declaration made, any disclosure or any general notice given by a Director under **clauses 18.7, 18.8 and/or 18.9** must be recorded in the minutes of the relevant meeting and otherwise in accordance with the Act.

19. POWERS AND DUTIES OF THE BOARD

- a) The business of the association shall be managed by the Board who may exercise all powers of the Association except any power which the Act or this Constitution require the Association to exercise in General Meeting. The Board may make, amend, or delete Regulations or by-laws regulating the conduct of Members or the activities of the Association.
- b) All cheques, promissory notes, drafts, bills or exchange and other negotiable instruments, and all receipts for money paid to the Association, must be signed by any two (2) Directors, or in such other way as the Board decides from time-to-time.
- c) The Board must cause minutes to be made:
 - (i) Of all appointments of officers and employees;
 - (ii) Of names of Directors present at each meeting of the Association and of the Board;
 - (iii) Of all proceedings at all meetings of the Association and of the Board; and
 - (iv) In accordance with the Act.

19.1 Board may delegate functions

The Board may, by instrument in writing, create, establish, or appoint special committees, individual officers, and consultants to carry out specific duties and functions.

The Board will determine what powers these committees are given. In exercising its power under this clause, the Board should take into account broad stakeholder involvement.

The Board must establish:

- a) the Nominations Committee; and
- b) a Finance, Risk and Audit Committee,

the complete and specific duties, functions, and rules for which are defined in separate written Charter for each body.

19.2 Delegation by instrument

In the establishing instrument, the Board may delegate such functions as are specified in the instrument, other than:

- a) this power of delegation; and
- b) a function imposed on the Board by the Act, any other law, or this Constitution.

19.3 Delegated function exercised in accordance with terms

A function, the exercise of which has been delegated under this clause, may, while the delegation remains unrevoked, be exercised from time-to-time in accordance with the terms of the delegation.

19.4 Procedure of delegated entity

The procedures for any entity exercising delegated power shall, subject to this Constitution and with any necessary or incidental amendment, be the same as that applicable to

meetings of the Board under **clause 18**. The entity exercising delegated powers shall make decisions in accordance with the Objects, and it shall promptly provide the Board with details of all material decisions. The entity shall also provide any other reports, minutes, and information as required by the Board from time-to-time.

19.5 Delegation may be conditional

A delegation under this clause may be made subject to certain conditions or limitations regarding the exercise of any function. These may be specified in the delegation.

19.6 Revocation of delegation

The Board may by resolution and/or instrument in writing, at any time revoke wholly or in part any delegation made under this clause. The Board may also amend or repeal any decision made by a body or person under this **clause 19**.

19.7 Board charter

The Board must:

- a) adopt a Board charter; and
- b) periodically review the Board charter in light of the general principles of good corporate governance.

20. ANNUAL GENERAL MEETING

- a) The Association's annual General Meeting shall be held in accordance with the Act and this Constitution. It should be held on a date and at a venue determined by the Board.
- b) All General Meetings other than the annual General Meeting shall be special General Meetings and shall be held in accordance with this Constitution.

21. SPECIAL GENERAL MEETINGS

21.1 Special General Meetings may be held

The Board may, whenever it thinks fit, convene a special General Meeting. When, but for this clause, more than fifteen (15) months elapses between annual General Meetings, the Board shall convene a special General Meeting before the expiration of that period.

21.2 Requisition of special General Meetings

- a) The Company Secretary will convene a special General Meeting when, subject to **clause 21.2(b)**, the lesser of fifty (50) Voting Members, or at least 5% of the Voting Members, submit a requisition in writing.
 - (i) The requisition for a special General Meeting shall state the object(s) of the meeting, be signed by the Members making the requisition and be sent to the Association. The requisition may consist of several like documents, each page signed by all of the Members making the requisition.
 - (ii) Subject to **clause 21.2(b)**, if the Board does not cause a special General Meeting to be held one (1) month after the date in which the requisition is sent to the Association, the Members making the requisition, or any of them, may convene a special General Meeting to be held no later than three (3) months after that date.

- (iii) A special General Meeting convened by Members under this Constitution shall be convened in the same manner, or as close as possible, as those convened by the Board.
- b) Where a special General Meeting is requisitioned, in part or in full, to remove one (1) or more Directors under **clause 17.2(h)**, the requisitioning Members and the applicable Director(s) must first undertake that part of the grievance procedure outlined in clauses **32(a)** and **(b)**. For the avoidance of doubt, the Board is not required to give notice of, or convene, a special General Meeting falling within this **clause 21.2(b)**, until such requirement is met.

22. NOTICE OF GENERAL MEETING

- a) Notice of every General Meeting shall be given to every Voting Member. Notices shall be sent to the email addresses appearing in the Association's Register. The auditor and Directors shall also be entitled to receive notice of every General Meeting. No other person shall be entitled, as of right, to receive notices of General Meetings.
- b) A notice of a General Meeting shall specify the place, day and hour of the meeting and shall state the business to be transacted at the meeting.
- c) At least twenty-one (21) days' notice of a General Meeting shall be given to Voting Members, together with:
 - (i) the agenda for the meeting; and
 - (ii) any notice of motion received from Voting Members.
- d) Notice of every General Meeting shall be given in the manner in **clause 40**.

23. BUSINESS

- a) The business to be transacted at the annual General Meeting includes the consideration of accounts and the reports of the Board and auditors, the election of Directors under this Constitution and subject to the requirements of the Act, the appointment of the auditors.
- b) All business that is transacted at a General Meeting and at an annual General Meeting, with the exception of those matters set down in **clause 23(a)**, shall be special business.
- c) No business other than that stated on the notice for a General Meeting shall be transacted at that meeting.

24. NOTICES OF MOTION

Voting Members may submit notices of motion for inclusion as special business at a General Meeting. All notices of motion must be submitted in writing on the prescribed form to the Association no less than twenty-five (25) days (excluding receiving date and meeting date) prior to the General Meeting.

25. CANCELLATION OR POSTPONEMENT OF GENERAL MEETING

25.1 Cancellation or postponement of General Meeting

Where a General Meeting (including an annual General Meeting) is convened by the Board it may, if it thinks fit, cancel the meeting, or postpone the meeting to a date and time it determines. However, this clause does not apply to a General Meeting convened by:

- a) Voting Members according to the Act;
- b) the Board at the request of Voting Members; or
- c) a Court.

25.2 Written notice of cancellation or postponement of General Meeting

Notice of the cancellation or postponement of a General Meeting must state the reasons for doing so and be given to:

- a) each Member entitled to attend the General Meeting; and
- b) each other person entitled to notice of a General Meeting under this Constitution or the Act,

at least seven (7) days prior to the date of the General Meeting.

25.3 Contents of notice postponing General Meeting

A notice postponing a General Meeting must specify:

- a) the new date and time for the meeting;
- b) the place where the meeting is to be held, which may be either the same as or different from the place specified in the notice originally convening the meeting; and
- c) if the meeting is to be held in two (2) or more places, the technology that will be used to hold the meeting in that manner.

25.4 Number of clear days for postponement of General Meeting

The number of clear days from the giving of a notice postponing a General Meeting to the date specified in that notice for the postponed meeting must not be less than the number of clear days' notice of that General Meeting required to be given by **clause 25.2**.

25.5 Business at postponed General Meeting

The only business that may be transacted at a postponed General Meeting is the business specified in the notice originally convening the meeting.

26. PROCEEDINGS AT GENERAL MEETINGS

26.1 Quorum

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings of the Association shall be twenty-five (25) Voting Members.

26.2 Chair to preside

The chair of the Board shall, subject to this Constitution, preside as chair at every General Meeting except:

- a) in relation to any election for which the chair is a nominee; or
- b) where a conflict of interest exists.

If the chair is not present, or is unwilling or unable to preside, the Board shall appoint either another Director, or an independent non-Member, to preside as chair for that meeting only, or if no such person is appointed, present or willing to act, an individual approved by a majority of the Voting Members.

26.3 Adjournment of meeting

- a) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall be adjourned until the same day in the next week at the same time and place or to a date, time or place determined by the chair. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting will lapse.
- b) The chair may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time-to-time and from place to place. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- c) When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- d) Except as provided in **clause 26.3(c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

26.4 Voting procedure

At any meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:

- a) the chair; or
- b) in accordance with the Act.

26.5 Recording of determinations

Unless a poll is demanded under **clause 26.4**, the chair's declaration shall be conclusive evidence of the result of a resolution decided by a show of hands. The declaration does not need to record the number of votes in favour of or against the resolution; the result of the resolution must be recorded in the minutes.

26.6 Where poll demanded

If a poll is duly demanded under **clause 26.4** it shall be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chair directs. The result of the poll shall be the resolution of the meeting.

26.7 Procedural irregularities

- a) No decision of the Association, the Board or any Board authorised entity shall be invalid merely because of a failure to give proper notice under this Constitution or the Regulations or other irregularity in procedure required by this Constitution or the Regulations unless a person suffers substantial prejudice as a result of that failure to give proper notice or irregularity in procedure.
- b) The Association, the Board or other Board authorised entity may confirm an earlier decision which may have been otherwise invalid because of a failure to give proper notice or other irregularity in procedure and the decision shall be deemed to be valid from the time it was originally made.

26.8 Right to appoint proxy

- a) A Voting Member entitled to attend a General Meeting of the Association is entitled to appoint a person as their proxy to attend the meeting in their place in accordance with the Act.
- b) A proxy may be revoked by the appointing Member at any time by notice in writing to the Association.

26.9 Form of proxy

The instrument appointing a proxy may be in form determined by the Board from time-to-time provided it complies with the requirements under the Act.

26.10 Lodgement of proxy documents

- a) A proxy may vote at a General Meeting or an adjourned or postponed meeting (as the case may be) only if the instrument appointing the proxy is received by the Association:
 - (i) at the office, email or electronic address specified for that purpose in the notice of meeting; and
 - (ii) at least forty-eight (48) hours before the scheduled commencement time for the meeting or adjourned or postponed meeting (as the case may be) at which the person named in the instrument proposes to vote. The scheduled commencement time is as specified in the notice of meeting.
- b) An undated proxy is taken to be dated on the day that it is received by the Association.

26.11 Authority given by appointment

- a) Unless the terms of the appointment specify to the contrary, an appointment by a Voting Member confers authority on a proxy:
 - (i) to agree to a General Meeting being convened by shorter notice than is required by the Act or by this Constitution;
 - (ii) to speak to any proposed resolution; and
 - (iii) to demand or join in demanding a poll on any resolution.

- b) Unless the terms of the appointment specify to the contrary, even if the instrument of appointment refers to specific resolutions and directs the proxy on how to vote on those resolutions, the appointment is taken to confer authority:
 - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (ii) to vote on any procedural motion; and
 - (iii) to act generally at the meeting.
- c) Unless the terms of the appointment specify to the contrary, if the instrument of appointment refers to a specific meeting to be held at a specified time or venue and the meeting is postponed or adjourned or changed to another venue, then the appointment confers authority to attend and vote:
 - (i) at the postponed or adjourned meeting; or
 - (ii) at the new venue.
- d) An appointment of a proxy may be a standing proxy - that is, the appointment under the proxy remains valid until it is revoked by the Voting Member that made the appointment.
- e) The instrument appointing a proxy may provide for the chair to act as proxy in the absence of any other appointment or if the person or persons nominated fails or fail to attend the meeting.
- f) The instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution.
- g) If a proxy is appointed to vote on a particular resolution by more than one (1) Voting Member and the instruments appointing the proxy direct the proxy to vote on the resolution in different ways, then the proxy must not vote on a show of hands taken on the resolution.

26.12 Proxy at postponed General Meeting

Where:

- a) by the terms of an instrument appointing a proxy, that appointed person is authorised to attend and vote at a General Meeting on behalf of the appointing Voting Member to be held on a specified date or at a General Meeting or General Meetings to be held on or before a specified date; and
- b) the date for the meeting is postponed to a date later than the date specified in the instrument,

then that later date is substituted for the date specified in the instrument appointing that appointed person, unless the appointing Voting Member notifies the Association in writing to the contrary at least forty-eight (48) hours before the time at which the postponed meeting is to be held.

26.13 Non-receipt of notice

The non-receipt of a notice convening, cancelling, or postponing a General Meeting by, or the accidental omission to give a notice of that kind to, a person entitled to receive it, does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of the meeting.

27. VOTING AT GENERAL MEETINGS

27.1 Voting Members

Each Individual Member and Junior Member (both of whose Membership Period end date is greater than the date of the General Meeting) and each Life Member and Life Playing Member shall be entitled to one (1) vote at General Meetings. No other Member shall be entitled to vote but shall, subject to this Constitution, have and be entitled to exercise those rights set out in **clause 5.1**.

27.2 Chair may not exercise casting vote

Where voting at General Meetings is equal, the motion will be lost and the chair does not have a casting vote.

27.3 Electronic voting

- a) Voting by electronic communication at General Meetings may be permitted from time-to-time in such instances as the Board determines and shall be held in accordance with procedures prescribed by the Board.
- b) Postal voting is not permitted at any General Meeting.

28. PROCEEDINGS OF THE BOARD

- a) The Board may meet for the dispatch of business, adjourn, and otherwise regulate its meetings as it thinks fit. A Director may at any time and the Company Secretary shall on request of a Director summon a meeting of the Board.
- b) A Virtual Meeting of the Board is treated as held at the place at which the greatest number of Directors present at the meeting is located or, if an equal number of Directors is located in each of two (2) or more places, at the place where the Chair of the meeting is located.
- c) Questions arising at any meeting of the Board are to be decided by a majority of votes and a determination by a majority of the Directors is for all purposes taken to be a determination of the Board. If votes are equal the Chair of the meeting is to have a second or casting vote.
- d) The quorum necessary for the transaction of business by the Board is a majority of the Directors holding office from time-to-time, or any greater number as may be fixed by Board.
- e) The continuing Directors may act despite any vacancy in the Board, but if and as long as their number is reduced below the minimum number of Directors fixed by or in accordance with this Constitution, the continuing Director or Directors may act for the purpose of increasing the number of Directors to that number or of summoning a General Meeting of the Association, but for no other purpose.
- f) The Board may delegate any of its powers and or functions (not being duties imposed on the Board as the Directors of the Association by the Act or the general law) to one (1) or more sub-committees which may comprise either or both a Director (or Directors) or such Member (or Members) of the Association or such other persons as the Board thinks fit. Any sub-committee so formed must conform to any regulation that may be imposed by the Board. Unless prohibited by regulation of the Board a sub-committee may co-opt any person. All members of a sub-committee are to have one (1) vote.
- g) The Board may appoint one (1) or more advisory working parties consisting of such Director or Directors or such Member (or Members) of the Association or such other

persons as the Board thinks fit. Such advisory working parties shall act in an advisory capacity only. They must conform to any Regulations that may be imposed by the Board and subject to those Regulations shall have the power to co-opt any person. All members of such advisory working parties shall have one (1) vote.

- h) A sub-committee may meet and adjourn as it thinks proper and may choose one (1) of their number to act as chairperson of their meetings. Questions arising at any meeting shall be determined by a majority of votes of the members of the sub-committee present, and if votes are equal the chair shall have a second or casting vote.
- i) All acts done by any meeting of the Board or of a sub-committee or by any person acting as a Director shall, even if it is afterwards discovered that there was some defect in the appointment of any Director or person acting as a Director, or that the Director or any of them were disqualified, be as valid as if every person had been duly appointed and was qualified to be a Director.
- j) If a document (which may be separate documents in identical terms) containing a statement that the signatories to it are in favour of a resolution in the terms set out or otherwise identified in the document has been signed by all the Directors (excluding any Director, who would not be entitled to vote on that resolution at a meeting of the Board), a resolution in those terms shall be taken to have been passed at a meeting of the Board held on the day on which and at the time at which the document was last signed by a Director. Such a statement contained in an unsigned email or other electronic transmission which is received by the Association and is expressed to have been sent by a Director is taken to be a document signed by that Director at the time of receipt by the Association.

29. VIRTUAL MEETINGS

29.1 Virtual Meeting

- a) A General Meeting or a meeting of the Board may be held by means of a Virtual Meeting, provided that:
 - (i) the number of Voting Members or Directors (as applicable) participating is not less than a quorum required for a General Meeting or meeting of the Board (as applicable); and
 - (ii) the meeting is convened and held in accordance with the Act.
- b) All provisions of this Constitution relating to a meeting apply to a Virtual Meeting in so far as they are not inconsistent with the provisions of this **clause 29**.

29.2 Conduct of Virtual Meeting

The following provisions apply to a Virtual Meeting of the Association:

- a) all persons participating in the meeting must be linked by telephone, audio-visual or other instantaneous means for the purpose of the meeting;
- b) each of the persons taking part in the meeting must be able to hear and be heard by each of the other persons taking part at the commencement of the meeting and each person so taking part is deemed for the purposes of this Constitution to be present at the meeting;
- c) at the commencement of the meeting each person must be distinguishable to the chair;

- d) a person may not leave a Virtual Meeting by willingly disconnecting his or her telephone, audio-visual or other communication equipment unless that person has previously notified the chair;
- e) a person may conclusively be presumed to have been present and to have formed part of a quorum at all times during a Virtual Meeting unless that person has previously notified the chair of leaving the meeting; and
- f) a minute of proceedings of a Virtual Meeting is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the chair.

30. GENERAL MANAGER

30.1 Appointment of General Manager

The Board may appoint a General Manager.

30.2 Powers, duties, and authorities of General Manager

- a) If appointed the General Manager holds office on the terms and conditions (including any remuneration) and with the powers, duties, and authorities, determined by the Board.
- b) The exercise of those powers and authorities, and the performance of those duties, by the General Manager is subject at all times to the control of the Board.

30.3 Suspension and removal of General Manager

Subject to the terms and conditions of the appointment, the Board may suspend or remove the General Manager from that office.

30.4 Delegation by Board to General Manager

The Board may delegate to the General Manager the power (subject to such reservations on the power as is decided by the Board) to conduct the day-to-day management and control of the business and affairs of the Association. The delegation will include the power and responsibility to:

- a) develop business plans, budgets, strategies, policies, processes, and codes of conduct for consideration by the Board and to implement them to the extent approved by the Board;
- b) manage the financial and other reporting mechanisms of the Association;
- c) approve and incur expenditure subject to specified expenditure limits;
- d) sub-delegate their powers and responsibilities to employees or internal management committees of the Association; and
- e) any other powers and responsibilities which the Board considers appropriate to delegate to the General Manager.

30.5 General Manager to attend meetings

If appointed the General Manager is entitled, subject to a determination otherwise by the Board, to attend all meetings of the Association, all meetings of the Board and any committees and may speak on any matter but does not have a vote.

31. COMPANY SECRETARY

31.1 Appointment of Company Secretary

- a) There must be at least one (1) Company Secretary who is to be appointed by the Board.
- b) The Company Secretary must not be a Director or employee of the Association.
- c) The Company Secretary may not serve for more than six (6) consecutive years in that office.
- d) The Board must, when considering the appointment of the Company Secretary, utilise a skills matrix in relation to the desired skillset of the role.

31.2 Suspension and removal of Company Secretary

The Board may suspend or remove a Company Secretary from that office.

31.3 Powers, duties, and authorities of Company Secretary

A Company Secretary holds office on the terms and conditions (including as to remuneration, if any) and with the powers, duties, and authorities, delegated to them by the Board.

32. GRIEVANCE PROCEDURE

- a) The grievance procedure set out in this clause applies to disputes arising under this Constitution between a Member and:
 - (i) another Member; or
 - (ii) the Association.

It does not, however, apply to any appeal by a Member against a decision made in accordance with the disciplinary proceedings described in **clause 10.1**
- b) The parties to the dispute must, where practical and appropriate, meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen (14) days after the dispute comes to the attention of all parties.
- c) If the parties are unable to resolve the dispute at the meeting or if a party fails to attend that meeting, then either party may refer the dispute to any independent tribunal established by the SSO in accordance with the procedures determined by the SSO from time-to-time. The Board may prescribe additional grievance procedures in Regulations consistent with this **clause 32**.
- d) If the dispute is not resolved within sixty (60) days, the Board may take whatever steps it considers appropriate in regard to the dispute in the best interests of the Association and the Members concerned.

33. RECORDS AND ACCOUNTS

33.1 Records

The Association shall establish and maintain proper records and minutes concerning all of its transactions, business, meetings, and dealings (including those of the Association and the Board).

33.2 Records kept in accordance with the Act

- a) Proper accounting and other records of the Association including books, minutes, documents, and securities shall be kept in accordance with the Act and otherwise shall be kept in the care and control of the Company Secretary.
- b) Subject to the Act and paragraph (c), the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records, accounts, books, securities, minutes of General Meetings or Board meetings or other relevant documents of the Association will be open for inspection by the Members.
- c) Subject to the Act and without limiting (b) above, the Board may refuse to permit a Member to inspect records of the Association, including minutes of Board meetings, which relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.

33.3 Board to submit accounts

The Board shall submit the Association's statements of account to the Members at the annual General Meeting in accordance with this Constitution and the Act.

33.4 Accounts conclusive

The statements of account, when approved or adopted by an annual General Meeting, shall be conclusive except when errors have been discovered within three (3) months after such approval or adoption.

33.5 Accounts to be available to Members

The Company Secretary shall ensure all persons entitled to receive notice of General Meetings under this Constitution, receive, or have access to a copy of the statements of account, the Board's report, the auditor's report, and other document required under the Act (if any).

34. AUDITOR

- a) A properly qualified auditor or auditors shall be appointed by the Association in General Meeting. The auditor's duties shall be regulated in accordance with the Act, and generally accepted principles and/or any applicable code of conduct. The auditor may be removed by the Board.
- b) The accounts of the Association shall be examined, and the correctness of the profit and loss accounts and balance sheets ascertained by an auditor or auditors at the conclusion of each financial year.

35. INCOME

- a) Income and property of the Association shall be:
 - (i) derived from such sources; and
 - (ii) managed in such manner;as the Board determines from time-to-time subject always to the Act and this Constitution.
- b) The income and property of the Association shall be applied solely towards the promotion of the Objects.

- c) Except as prescribed in this Constitution or the Act:
 - (i) no portion of the income or property of the Association shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to any Member or Director; and
 - (ii) no remuneration or other benefit in money or money's worth shall be paid or given by the Association to any Member who holds any office of the Association.
- d) Nothing in **clauses b) or c)** shall prevent payment in good faith to any Member for:
 - (i) any services actually rendered to the Association whether as an employee, Director or otherwise;
 - (ii) goods supplied to the Association in the ordinary and usual course of operation;
 - (iii) interest on money borrowed from any Member;
 - (iv) rent for premises demised or let by any Member to the Association; or
 - (v) any out-of-pocket expenses incurred by a Member on behalf of the Association,

provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

36. WINDING UP

- a) Subject to this Constitution the Association may be wound up or deregistered in accordance with the Act.
- b) The liability of the Members of the Association is limited.
- c) Every Individual Member undertakes to contribute to the assets of the Association if it is wound up or cancelled while they are a Member, or within one (1) year after ceasing to be a Member, for payment of the debts and liabilities of the Association contracted before the time at which they ceased to be a Member and towards the costs, charges, and expenses of winding up or cancelling the registration of the Association, such an amount not exceeding one dollar (\$1.00).

37. DISTRIBUTION OF PROPERTY ON WINDING UP

If upon winding up or cancellation of the Association there remains, after satisfaction of all its debts and liabilities, any assets or property, they shall not be paid to or distributed among the Members. Instead, the assets or property shall be given or transferred to an organisation or organisations with objects similar to the Objects. Such organisation(s) must prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the Association by this Constitution. Such organisation(s) will be determined by the Members in a General Meeting at or before the time of winding up or cancellation. If this does not occur, the decision is to be made by a judge of the Supreme Court of New South Wales or other Court as may have or acquire jurisdiction in the matter.

38. ALTERATION OF CONSTITUTION

This Constitution shall not be altered except by Special Resolution.

39. REGULATIONS

39.1 Board to formulate Regulations

The Board may formulate, issue, adopt, interpret, and amend Regulations (sometimes referred to as by-laws) for the proper advancement, management and administration of the Association, the advancement of the Objects and Basketball in the Local Area. Such Regulations must be consistent with this Constitution and any policy directives of the Board.

39.2 Regulations binding

All Regulations are binding on the Association and all Members.

39.3 Regulations deemed applicable

All clauses, rules, by-laws, and Regulations of the Association (by whatever name) in force at the date of the approval of this Constitution (as long as such clauses, rules, by-laws, or Regulations are not inconsistent with or have been replaced by, this Constitution) shall be deemed to be Regulations and shall continue to apply and be in operation.

39.4 Changes binding on Members

Amendments, alterations, interpretations, or other changes to Regulations shall be advised to Members by such means as are determined and approved by the Board from time-to-time. The Association shall take reasonable steps to distribute such changes to Members. All changes are binding on all Members.

40. STATUS AND COMPLIANCE OF ASSOCIATION

40.1 Recognition of Association

The Association is a member of Basketball NSW and is recognised by Basketball NSW as the entity responsible for the delivery of Basketball in the Local Area in accordance with the Objects but subject always to compliance with this Constitution and Basketball NSW constitution.

40.2 Constitution of the Association

This Constitution will clearly align with the objects of Basketball NSW and the Association will do what is reasonably necessary to facilitate the Basketball NSW objects being achieved.

40.3 Obligations as an Association of Basketball NSW

The Association will:

- a) act in good faith to maintain and enhance Basketball, its standards, quality, and reputation for the collective and mutual benefit of the Members, the Association, Basketball NSW, and Basketball;
- b) operate with, and promote, mutual trust and confidence between the Association, the Members and Basketball NSW, promoting the economic and sporting success, strength, and stability of each other and work cooperatively with each other in the pursuit of the Objects and Basketball;
- c) maintain a database of all Members registered with it in accordance with this Constitution (which is satisfied through use of Basketball NSW's database) and, if not already available through Basketball NSW's database, provide a copy to Basketball NSW upon request from time-to-time in such means as may be reasonably required;

- d) not do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of Basketball and its maintenance and development;
- e) provide Basketball NSW with copies of its accounts (whether or not audited), annual report and business plan (if any) immediately following its annual General Meeting;
- f) advise Basketball NSW as soon as practicable of any serious administrative, operational, or financial difficulties the Association is having;
- g) where it has a non-functioning Board or committee, or where it requests assistance from Basketball NSW, assist Basketball NSW in investigating those issues; and
- h) cooperate with Basketball NSW in addressing those issues in whatever manner, including if by agreement between the Association and Basketball NSW, allowing Basketball NSW to appoint an administrator to conduct and manage the Association's business and affairs, or to allow Basketball NSW itself to conduct itself all or part of the business or affairs of the Association and on such conditions as Basketball NSW considers appropriate. Basketball NSW is not obliged to act under this clause.

40.4 State Sporting Organisation

The Association may not resign, disaffiliate, or otherwise seek to withdraw from Basketball NSW without approval by Special Resolution of the Members.

41. NOTICE

- a) Notices may be given by the Association to any person entitled under this Constitution to receive any notice. The notice can be:
 - (i) sent by email to the Member's email address; or
 - (ii) prominently posted on the Association's website.
- b) Where a notice is sent by electronic mail or on the Association's website, service of the notice shall be deemed to be affected the next business day after it was sent or posted.

42. INDEMNITY

42.1 Indemnity of officers

- a) This **clause 42** applies to every person who is or has been:
 - (i) a Director, General Manager or Company Secretary of the Association; and
 - (ii) to any other officers, employees, former officers, or former employees of the Association or of its related bodies corporate as the Board in each case determines.

Each person referred to in this paragraph (a) is referred to as an Indemnified Officer for the purposes of the rest of **clause 42**.

- b) The Association will indemnify each Indemnified Officer out of the property of the Association against:
 - (i) every liability (except a liability for legal costs) that the Indemnified Officer incurs as an officer of the Association or of a related body corporate of the Association; and

- (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the Indemnified Officer becomes involved as an officer of the Association or of a related body corporate of the Association,

unless:

- (iii) the Association is forbidden by statute to indemnify the person against the liability or legal costs; or
- (iv) an indemnity by the Association of the person against the liability or legal costs would, if given, be made void by statute.

42.2 Insurance

The Association may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Indemnified Officer against liability that the Indemnified Officer incurs as an officer of the Association or of a related body corporate of the Association including a liability for legal costs, unless:

- a) the Association is forbidden by statute to pay or agree to pay the premium; or
- b) the contract would, if the Association paid the premium, be made void by statute.

42.3 Deed

The Association may enter into a deed with any Indemnified Officer or a deed poll to give effect to the rights conferred by **clause 42.1** on the terms the Board thinks fit (as long as they are consistent with **clause 42.1**).